

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EKMAN & CO AB.,

Plaintiff,

-against -

GRAPHIC PAPER, INC.,

Defendant.

ECF Case

Case No. 10 CV 8110 (JGK)

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GRAPHIC PAPER, INC.,

Interpleader Plaintiff,

-against -

EKMAN & CO AB. and  
U.S. BANK NATIONAL ASSOCIATION,

Interpleader Defendants.  
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**DECLARATION OF JOSEPH  
ZELMANOVITZ IN SUPPORT OF  
INTERPLEADER DEFENDANT  
U.S. BANK NATIONAL  
ASSOCIATION'S MOTION FOR  
SUMMARY JUDGMENT**

Joseph Zelmanovitz declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the bar of this Court and of counsel to Wilk Auslander LLP, attorneys for interpleader defendant U.S. Bank National Association ("U.S. Bank") in this action. I submit this declaration in support of U.S. Bank's motion, pursuant to Fed. R. Civ. P. 56(a), for an order granting it summary judgment dismissing (i) the cross-claim filed by plaintiff/interpleader defendant Ekman & Co AB. ("Ekman") alleging tortious interference with contract, and (ii) the cross-claim for indemnification filed by defendant/interpleader plaintiff Graphic Paper, Inc. ("Graphic") (collectively, the "cross-claims").

2. On March 10, 2005, the Supreme Court of the State of New York, County of New York, entered judgment in favor of U.S. Bank and against the following entities in an aggregate amount in excess of \$851 million (the “Judgment”): APP International Finance Company B.V.; P.T. Lontar Papyrus Pulp & Paper Industry; Asia Pulp & Paper Company, Ltd.; Indah Kiat International Finance Company B.V.; and P.T. Indah Kiat Pulp & Paper Corporation (collectively, the “Judgment Debtors”). A copy of the Judgment is attached to this declaration as Exhibit A.

3. On or about August 5, 2010, U.S. Bank served on Graphic a *subpoena duces tecum* and Restraining Notice (the “Restraining Notice”), restraining Graphic from making any sale, assignment or transfer of, or interfering with any property of the Judgment Debtors, its affiliates and/or its agents, or paying over or otherwise disposing of any debt owed to Judgment Debtors, its affiliates and/or agents, restraining all property in which the Judgment Debtors, its affiliates and/or agents, have an interest that is in Graphic’s possession or custody and restraining all debts coming due from Graphic to the Judgment Debtors, its affiliates and/or agents. A copy of the Restraining Notice is attached to this declaration as Exhibit B.

4. Attached as Exhibit C to this declaration is a copy of the complaint filed by Ekman against Graphic in this action on or about October 25, 2010. DKT #1.<sup>1</sup>

5. Attached as Exhibit D to this declaration is a copy of Graphic’s answer to Ekman’s complaint, and interpleader complaint against Ekman and U.S. Bank, filed on or about November 18, 2010. DKT # 6.

6. Attached as Exhibit E to this declaration is a copy of an amended answer to Ekman’s complaint, and interpleader complaint against Ekman and U.S. Bank, filed on or about December 7, 2010. DKT # 13.

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<sup>1</sup> “DKT” refers to the docket number of the Court’s file in this action.

7. Attached as Exhibit F to this declaration is a copy of U.S. Bank's answer, counterclaim and cross-claim to the interpleader complaint, filed on or about January 10, 2011. DKT # 21.

8. Attached as Exhibit G to this declaration is a copy of Graphic's answer to U.S. Bank's counterclaim, filed on or about February 4, 2011. DKT #26.

9. Attached as Exhibit H to this declaration is a copy of Ekman's answer to the interpleader complaint, filed on or about April 18, 2011. DKT #29.

10. Attached as Exhibit I to this declaration is a copy of Ekman's answer to U.S. Bank's cross-claims, and Ekman's cross-claim against U.S. Bank, filed on or about April 18, 2011. DKT# 30. Ekman's cross-claim purports to plead a claim for tortious interference with contract as against U.S. Bank.

11. Attached as Exhibit J to this declaration is a copy of U.S. Bank's answer to Ekman's cross-claim. DKT # 35.

12. Attached as Exhibit K to this declaration is a copy of Graphic's amended answer to Ekman's complaint, interpleader complaint, and cross-claim against U.S. Bank for "Indemnification," filed on or about August 2, 2011. DKT #49.

13. By this motion, U.S. Bank seeks an order granting it summary judgment against Ekman dismissing its cross-claim for tortious interference with contract, and against Graphic dismissing its cross-claim for indemnification.

14. Attached as Exhibit L to this declaration is a copy of U.S. Bank's answer to Graphic's interpleader complaint, counterclaims against Graphic and cross-claims against Ekman, and answer to Graphic's cross-claim, filed on or about August 3, 2011. DKT # 50.

15. Attached as Exhibit M to this declaration are copies of the pages of the transcript of the deposition of Joel R. Morgenthau, Esq., attorney for Graphic, taken on October 5, 2011, which are referred to in the accompanying memorandum of law.

16. Attached as Exhibit N to this declaration is a copy of an email dated August 24, 2010, from Joel L. Morgenthau to Jessica Taran, attorney for U.S. Bank. This email was authenticated by Mr. Morgenthau at his October 5, 2011 deposition (at pages 19-20).

17. Attached as Exhibit O to this declaration is a copy of an email dated August 24, 2010, from Ms. Taran to Mr. Morgenthau. This email, which was authenticated by Mr. Morgenthau at his October 5, 2011 deposition (at pages 23-24), is Ms. Taran's reply to the email attached as Exhibit N.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18, 2012 in New York, New York.

/s/ Joseph Zelmanovitz

Joseph Zelmanovitz  
(JZ-0085)